Court File No. C59074

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff
(Respondent in Appeal)

and

DENIS RANCOURT

Defendant
(Appellant in Appeal)

FACTUM OF THE RESPONDENT JOANNE ST. LEWIS

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PART I - OVERVIEW

A. The Jury Awards $350,000 In Damages Caused By The Appellant's Malicious And Defamatory "House Negro" Articles

1. The Appellant, a self-described anarchist, published two racist and defamatory articles that referred to the Respondent (University of Ottawa Law Professor Joanne St. Lewis) as the House Negro of University of Ottawa President Allan Rock.

2. The Appellant appeals the jury's verdict that he maliciously defamed Professor St. Lewis. The jury awarded Professor St. Lewis $100,000 in general damages and $250,000 in aggravated damages.

B. The Appellant Abandoned The Trial On Day #2 And Told The Media That The Ontario Superior Court Of Justice Is A Kangaroo Court

3. The Appellant abandoned the trial before the commencement of the 2nd day of Professor St. Lewis' examination-in-chief. Prior to walking out of the courtroom, the Appellant read a prepared statement to the Trial Judge (Justice Michel Charbonneau) that stated in part:

> "...This would give nightmares to Kafka himself.
>
> To my eyes, we are no longer in Canada — and we can no longer claim to have a system of justice in this action before you Your Honour.
>
> I am outraged by this gag order imposed in a manner that is apparently arbitrary, which does not allow me to be heard and to "have my day in court".
>
> I have pleaded "abuse of process" at every step and now, at trial itself, I don't even have the right to say that the University of Ottawa is entirely financing the plaintiff or the right to use the *Jameel* defense that applies to situations where the defendant advances a lack of actual damage to reputation, that's "actual" damage, and to "reputation", not some other kind of damage.
>
> I was very disturbed by these incomprehensible events, and I have been deeply perturbed all day yesterday; confused also, as a self-represented litigant. This morning I inform the Court that I can no longer participate in such a process.
>
> Therefore, I'm leaving this unjust process. You will take the decisions in my absence. It's finished for me. I'm leaving."

4. Shortly after the Appellant told the Learned Trial Judge that "I can no longer participate in such a process" and "It's finished for me. I'm leaving", he published his prepared statement on his website uofowatch.blogspot.com knowing that Professor St. Lewis and her witnesses were testifying before the jury.

5. Within hours of abandoning his defence of this libel action, the Appellant told an *Ottawa Citizen* reporter that Justice Charbonneau's Court was a "Kangaroo court":

> "To strike out a pleading is a Draconian measure," Rancourt said, adding that the judge's ruling effectively gutted his defence strategy and created "a fake process where I'm gagged.
>
> "That, to me, is absurd. It's insane," he exclaimed. "It's the opposite of what should happen in a fair process. I'm not going to participate in that kind of kangaroo court…This poor jury is not going to hear the whole story." (*Ottawa Citizen* – May 16, 2014)

The Trial Judge did not strike out a pleading. The Trial Judge did not issue a gag order. The alleged "Draconian measure" was the Trial Judge's ruling that the Appellant could not adduce evidence about his so called "Jameel defence". The Appellant's Supplementary Notice of Appeal abandoned the "Jameel defence" ground of appeal.

6. The trial continued before the jury after the Appellant ended his participation at the trial. The Appellant's next appearance at the trial was when the jury was deliberating. Although the Appellant abandoned his defence he was busy attempting to prejudice the jury by telling the media "this poor jury is not going to hear the whole story," posting articles on his website ("Why I Walked Out Of The Trial In Which I Am Being Sued"), hyperlinking to a petition "Give A Fair Court Hearing To Denis Rancourt" and posting *voir dire* materials on archive.org about his allegations of bias against the Trial Judge.

7. The *Factum Of The Appellant* sets out six issues in this appeal. Professor St. Lewis submits that the Appellant has no right of appeal regarding any matters that took place at trial

after he abandoned the defence of his libel action. Accordingly, the only issue to be considered by this Honourable Court is issue #5 – reasonable apprehension of bias.

C. Reasonable Apprehension of Bias (Issue #5)

8. The Appellant asked the Trial Judge to recuse himself on the ground of reasonable apprehension of bias because Justice Charbonneau obtained his university degrees from the University of Ottawa (over 38 years ago), donated money to the University of Ottawa (two $500 donations) and was a former partner of the case management Judge Robert Smith (over 17 years ago). Justice Charbonneau dismissed the Appellant's recusal motion.

9. Justice Charbonneau is the fourth Judge of the Ontario Superior Court of Justice that the Appellant has claimed to have a reasonable apprehension of bias against him in this libel action. This Court previously dismissed an appeal by the Appellant that alleged *inter alia* that Justice Robert Beaudoin held a reasonable apprehension of bias for failing to disclose that he created a scholarship in the name of his deceased son at the University of Ottawa.

10. The *Committee For Justice And Liberty v National Energy Board* test requires that "the apprehension of bias must be a reasonable one, held by reasonable and right minded persons". The Appellant's allegation of apprehension of bias was absurd and yet another one of his attempts to delay the trial of this libel action. Justice Charbonneau had no knowledge about this case and no connection to the parties to this libel action. An informed person, viewing the matter realistically and having thought the matter through, would not conclude that Justice Charbonneau, a Trial Judge for over 17 years, would not decide fairly. The Appellant has failed to rebut the strong presumption of impartiality and integrity of Justice Charbonneau. This appeal should be dismissed.

PART II – STATEMENT OF FACTS

A. THE APPELLANT'S FALSE AND DEFAMATORY HOUSE NEGRO ARTICLES

11. The jury found that the Appellant, Denis Rancourt, published two defamatory articles that referred to University of Ottawa Law Professor Joanne St. Lewis as the "House Negro" of the President of the University of Ottawa (Allan Rock).

12. The jury also found actual malice on the part of the Appellant and awarded Professor St. Lewis $100,000 in general damages and $250,000 in aggravated damages.

Questions For The Jury, Trial Exhibit J-3, Compendium Of The Respondent ("COTR"), Volume 3, Tab 15, pp. 638-659.

13. Professor St. Lewis is an Assistant Professor in the Common Law Section of the Faculty of Law of the University of Ottawa. Professor St. Lewis was awarded tenure in 2001 and her life has been devoted to combating racism and the promotion of equality rights. She is the first Black woman to be elected as a Bencher of the Law Society of Upper Canada in its then 214 year history.

Curriculum Vitae (Professor St. Lewis), Trial Exhibit P-1 (Tab 1), COTR, Volume 3, Tab 18, pp. 664-680.

14. The Appellant is a former tenured physics Professor at the University of Ottawa. The Appellant was dismissed by the University of Ottawa in 2009.

15. The Appellant published an article on his website uofowatch.blogspot.com headlined "Did Professor Joanne St. Lewis act as Allan Rock's House Negro?", which contained multiple statements that the jury found to be defamatory:

(i) Did Professor St. Lewis Act as Allan Rock's House Negro?

(ii) February is Black History Month in Canada and the US. UofOWatch believes that it is the right time not only to honour Black Americans who fought for social justice against masters but also to out Black Americans who were and continue to be house negroes to masters;

(iii) The same spirit prevailed when civil rights icon Ralph Nader suggested that US President Obama needed to decide if he was going to be an Uncle Tom;

(iv) The Student Appeal Centre ("SAC") of the student union at the University of Ottawa today released documents obtained by an access to information ("ATI") request that suggest that law professor Joanne St. Lewis acted like President Allan Rock's house negro when she enthusiastically toiled to discredit a 2008 SAC report about systemic racial discrimination at the university;

(v) The newly released ATI records are disturbing far beyond the nontenured professor St. Lewis' uncommon zeal to serve the university administration;

(vi) The ATI records expose a high level cover up orchestrated by Allan Rock himself to hide the fact that the St. Lewis efforts were anything but "independent", as she characterizes her report on the first page;

(vii) Ironically, the original SAC report was about racial discrimination regarding academic fraud appeals; such as when an academic misrepresents his/her work as "independent" when it is verifiably and factually not "independent" (by any stretch!);

UofOWatch article, "Did Professor Joanne St. Lewis act as Allan Rock's house negro?", Trial Exhibit P-3, COTR, Volume 3, Tab 16, p. 660;
Questions For The Jury, Trial Exhibit J-3, COTR, Volume 3, Tab 15, pp. 638-659.

16. The day after the Appellant was served with a Notice of Libel regarding his first House Negro article, he published the second article that the jury found to be defamatory (headlined "Top dog Canada freedom of the press lawyer targets U of O Watch blog"). This article (which was promptly met with a second Notice of Libel) referred to Professor St. Lewis as a House Negro three more times:

> I did not say that Prof. St. Lewis acted like a house negro because she is black. I said it because it was reasonable to conclude in the matter that she acted like a house negro and because it is my reasoned opinion that she acted like a house negro. She did so while attempting to discredit a 2008 student union report that alerted the university to its now more than evident problem of systemic racism: See all posts of U of O racism HERE.

UofOWatch article, "Top dog Canadian freedom of the press lawyer targets UofOWatch blog", Trial Exhibit P-4, COTR, Volume 3, Tab 17, p. 661;
Questions For The Jury, Trial Exhibit J-3, COTR, Volume 3, Tab 15, pp. 638-659.

17. Both Notices of Libel demanded that the Appellant immediately take down the defamatory House Negro articles – he refused to do so.

> **Notice of Libel dated May 16, 2011, Trial Exhibit P-1 (Tab 4), COTR, Volume 3, Tab 19, pp. 683-684;**
> **Notice of Libel dated May 20, 2011, Trial Exhibit P-1 (Tab 5), COTR, Volume 3, Tab 20, pp. 687.**

18. The Appellant not only refused to take down his "House Negro" articles, he intentionally published numerous additional defamatory "comments" about Professor St. Lewis after he was sued (e.g. the Appellant published a "comment" from a reader in England that defamed Professor St. Lewis in a vile Baa Baa Black Sheep rant).

> **See for example Comments section, UofOWatch article, "U of O law professor Joanne St. Lewis sues Rancourt for $1 million, will give half to a law student scholarship fund", Trial Exhibit P-2 (Tab 50), COTR, Volume 3, Tab 21, pp. 698-702.**

19. The jury found that the Appellant's House Negro articles were in fact defamatory. The natural and ordinary meanings found by the jury included that Professor St. Lewis:

(i) needed to be outed for acting in a servile manner toward President Allan Rock of the University of Ottawa;

(ii) sold herself out to the President of the University of Ottawa;

(iii) was dishonest;

(iv) participated in a high level cover up of wrong doing;

(v) conducted and authored a report that was disingenuous or deceitful to promote the interests of the University of Ottawa or herself; and

(vi) lacked integrity.

20. The legal innuendos found by the jury were that Professor St. Lewis was:

(i) a race traitor;

(ii) a pariah in the Black community;

(iii) forfeited her social identity with the Black community; and

(iv) severed her bond with the Black community and her racial and cultural heritage.

Questions For The Jury, Trial Exhibit J-3, COTR, Volume 3, Tab 15, pp. 638-659.

21. Professor St. Lewis has litigated against the Appellant for over 3 years and has had to address the Appellant's malicious conduct from the day he was served with the first Notice of Libel. During these years of litigation, the Appellant filed or caused to be filed 30 motions and appeals that were all decided in favour of Professor St. Lewis by a Master, five Justices of the Ontario Superior Court of Justice, this Honourable Court and the Supreme Court of Canada (twice).

22. One of the Appellant's failed motions was a champerty/abuse of process motion alleging that the University of Ottawa's agreement to pay Professor St. Lewis' legal fees was champertous and constituted an abuse of process. The Appellant's motion was dismissed by Ontario Superior Court Justice Robert Smith who found that these allegations were unsupported by any evidence. The Appellant's appeal of Justice Smith's decision was dismissed by this Honourable Court from the Bench (with costs of $35,000) and leave to appeal this Court's decision was denied by the Supreme Court of Canada (with solicitor-client costs).

***St. Lewis v Rancourt*, 2013 ONSC 1564, [2013] OJ No 1187 (ONSC), at paras 92, 93 and 97, aff'd 2013 ONCA 701, [2013] OJ No 5199 (ONCA), leave to appeal to the SCC dismissed [2014] SCCA No 6 (SCC), Respondent's Book of Authorities ("RBOA"), Tab 1.**

B. THE APPELLANT'S ABANDONMENT OF THE TRIAL ON DAY #2

23. On the morning of May 16, 2014 (day #2 of the trial evidence) the Appellant read from a prepared statement prior to the jury returning to the courtroom and advised Trial Judge Charbonneau *inter alia*:

> "...This would give nightmares to Kafka himself.
>
> To my eyes, we are no longer in Canada — and we can no longer claim to have a system of justice in this action before you Your Honour.
>
> I am outraged by this gag order imposed in a manner that is apparently arbitrary, which does not allow me to be heard and to "have my day in court".
>
> I have pleaded "abuse of process" at every step and now, at trial itself, I don't even have the right to say that the University of Ottawa is entirely financing the plaintiff or the right to use the *Jameel* defense that applies to situations where the defendant advances a lack of actual damage to reputation, that's "actual" damage, and to "reputation", not some other kind of damage.
>
> I was very disturbed by these incomprehensible events, and I have been deeply perturbed all day yesterday; confused also, as a self-represented litigant. This morning I inform the Court that I can no longer participate in such a process.
>
> Therefore, I'm leaving this unjust process. You will take the decisions in my absence. It's finished for me. I'm leaving."

***St. Lewis v Rancourt,* Trial Transcript Volume 6, May 16, 2014, pp. 11-16 (emphasis added), COTR, Volume 1, Tab 1, pp. 2-7.**

24. The Appellant then walked out of the courtroom and the trial continued in his absence before the jury. The Appellant's next appearance at the trial was three weeks later after the jury retired to deliberate (June 3rd). The Appellant was not present at the trial:

(i) during the remainder of Professor St. Lewis' examination-in-chief and the testimony of all of her witnesses;

(ii) during the Closing Address to the jury by counsel for Professor St. Lewis; and

(iii) during the Trial Judge's Charge To The Jury.

Trial Transcript, Volume 6, May 16, 2014, pp. 1-17, COTR, Volume 1, Tab 2, pp. 9-25;
Trial Transcript, Volume 11, June 2, 2014 at 11-134, COTR, Volume 2, Tab 7, pp. 422-545
Trial Transcript, Volume 12, June 3, 2014 at 7-41, COTR, Volume 2, Tab 8, pp. 547-581.

25. Shortly after the Appellant told the Learned Trial Judge that "I can no longer participate in such a process" and "it's finished for me. I'm leaving", he published his prepared statement on his website uofowatch.blogspot.com.

> **U of O Watch Article, "Why I walked out of the trial in which I am being sued", Exhibit R-5, COTR, Volume 3, Tab 22, pp. 704-706.**

26. Within hours of abandoning his defence of this libel action, the Appellant told an *Ottawa Citizen* reporter that Trial Judge Charbonneau's Court was a "Kangaroo court":

> "To strike out a pleading is a Draconian measure," Rancourt said, adding that the judge's ruling effectively gutted his defence strategy and created "a fake process where I'm gagged.
>
> "That, to me, is absurd. It's insane," he exclaimed. "It's the opposite of what should happen in a fair process. I'm not going to participate in that kind of kangaroo court…This poor jury is not going to hear the whole story" (*Ottawa Citizen* – May 16, 2014)

> ***Ottawa Citizen* article dated May 16, 2014 entitled "Rancourt Walks Out On Kangaroo Trial", Exhibit R-3, COTR, Volume 3, Tab 23, pp. 707-708.**

27. Throughout the remainder of the trial while the jury was hearing testimony from Professor St. Lewis' witnesses, the Appellant posted articles on his website uofowatch.blogspot.com and also published on archive.org the *voir dire* motion materials that requested that the Trial Judge recuse himself for bias. During the course of the trial, counsel for the Respondent filed 23 "R-exhibits" in the absence of the jury documenting the Appellant's prejudicial conduct.

> **Exhibits R-1 to R-23, Exhibit Book of the Appellant, Volumes 7-8, Tabs 54-76, pp. 1698-1941.**

28. On May 16th, after the Appellant walked out of the courtroom, the examination-in-chief of Professor St. Lewis continued. On May 20th-22nd, counsel for the Respondent examined the Respondent's expert witness Professor Camille Nelson (the Dean of the Suffolk University Law

School in Boston) and ten fact witnesses, and read in evidence from the transcripts of the examination for discovery of the Appellant. The Appellant was not present in the courtroom.

Trial Transcript, Volume 6, May 16, 2014 at 27-120, COTR, Volume 1, Tab 3, pp. 27-120;
Trial Transcript, Volume 7, May 20, 2014 at 46-76, 95 to 176, COTR, Volume 1, Tab 4, pp. 122-235;
Trial Transcript, Volume 8, May 21, 2014 at 5-79, COTR, Volume 1, Tab 5, pp. 237-311;
Trial Transcript, Volume 9, May 22, 2014 at 1-108, COTR, Volume 2, Tab 6, pp. 313-420.

29. On June 2nd, counsel for the Respondent delivered his Closing Address to the jury. The Appellant was not present in the courtroom.

Trial Transcript, Volume 11, June 2, 2014 at 11-134, COTR, Volume 2, Tab 7, pp. 422-545.

30. On June 3rd, Trial Judge Charbonneau delivered his Charge to the jury and the jury retired to deliberate. The Appellant was not present in the courtroom.

Trial Transcript, Volume 12, June 3, 2014 at 7-41, COTR, Volume 2, Tab 8, pp. 547-581;
Trial Exhibit J-1, COTR, Volume 3, Tab 24, pp. 709-739.

31. On June 5th, the jury issued their verdict, finding that the Appellant's "House Negro" articles were defamatory and finding actual malice on the part of the Appellant. The jury awarded total damages of $350,000 to Professor St. Lewis, consisting of $100,000 in general damages, and $250,000 in aggravated damages.

Trial Transcript, Volume 14, June 5, 2014 at pp. 2-16, COTR, Volume 2, Tab 9, pp. 583-597;
Trial Exhibit J-3, COTR, Volume 3, Tab 15, pp. 638-659.

32. The Appellant was present in the courtroom to oppose Professor St. Lewis' request for a permanent injunction and take down Orders. Counsel for the Professor St. Lewis objected to the Appellant's participation because the Appellant had abandoned the trial. The Trial Judge allowed the Appellant to participate. On June 6th, Justice Charbonneau ordered the Appellant, *inter alia*, to take down the defamatory articles and issued a permanent injunction.

Order of Justice Charbonneau dated June 6, 2014, COTR, Volume 3, Tab 25, pp. 740-742.
Trial Transcript, Volume 15A, June 6, 2014, pp 1-21, COTR, Volume 2, Tab 10, pp. 599-619.

PART III – POSITION OF THE RESPONDENT WITH RESPECT TO THE ISSUES RAISED BY THE APPELLANT

A. STANDARD OF REVIEW

(a) Jury Verdict

33. The Appellant seeks an order for the trial judgment to be set aside and a new trial of the action to be ordered with a new judge and jury. Appellate review of a civil jury award is limited. The standard is unreasonableness. A jury verdict is not to be set aside unless it is so plainly unreasonable and unjust that no jury, reviewing the evidence as a whole and acting judicially could have arrived at the verdict. The jury verdict was not only reasonable, it was correct and just.

> ***Boucher v Wal-Mart Canada Corp,*** **2014 ONCA 419, [2014] OJ No 2452 (ONCA), at paras 49, 56, RBOA, Tab 2;**
> ***Kerr v Loblaws Inc.*****, 2007 ONCA 371, [2007] OJ No 1921 (ONCA) at para 46, RBOA, Tab 3;**
> ***Housen v Nikolaisen,*** **2002 SCC 33, [2002] 2 SCR 235 (SCC) at para 30, RBOA, Tab 4.**

(b) Malice

34. The jury found actual malice on the part of the Appellant. Whether a plaintiff has established malice is a question of mixed fact and law, heavily dependent on the facts disclosed by the evidence adduced at trial and subject to the palpable and overriding standard of review. The jury had ample evidence of the Appellant's actual malice.

> ***Foulidis v Baker,*** **2014 ONCA 529, [2014] OJ No 3239 (ONCA) at paras 55, 58-59, RBOA, Tab 5.**

35. The Appellant abandoned the defence of truth during his examination for discovery which left him with the defence of fair comment. Accordingly, even if the Appellant had defended himself and adduced evidence at trial to support his fair comment defence, that defence would have been defeated by the jury's finding that he acted with actual malice towards Professor St. Lewis.

B. NO REASONABLE APPREHENSION OF BIAS OF THE TRIAL JUDGE (ISSUE #5)

36. The *Factum Of The Appellant* alleges that "there is a common law reasonable apprehension of bias of the trial judge" (paragraphs 89-90).

37. In order to rebut the presumption of judicial impartiality, the following test has been developed by the Supreme Court of Canada in *Committee For Justice And Liberty v Canada (Natural Energy Board)*:

> The apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information … [T]hat test is "what would an informed person, viewing the matter realistically and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker] whether consciously or unconsciously would not decide fairly."
>
> ***Committee for Justice and Liberty v Canada (National Energy Board),* [1978] 1 SCR 369 (SCC)at 18, RBOA, Tab 6;**
> ***See also: R v S (R.D.),* [1997] 3 SCR 484 at para 111, RBOA, Tab 7; *Wewaykum Indian Band v Canada,* 2003 SCC 45, [2003] 2 SCR 59 (SCC)at para 60, RBOA, Tab 8 [*Wewaykum*]; *Bailey v Barbour,* 2012 ONCA 325, [2012] OJ No 2178 (ONCA)at para 16 [*Bailey*], RBOA, Tab 9; *Terceira v Labourers International Union of North America,* 2014 ONCA 839, [2014] OJ No 5648 (ONCA) at para 30, RBOA, Tab 10; *Hazelton Lanes Inc. v 1707590 Ontario Limited,* 2014 ONCA 793, [2014] OJ No 5365 (ONCA), at paras 58-65, RBOA Tab 11; *Mennes v Canada (Attorney General),* 2014 ONCA 690, [2014] OJ No 4789 (ONCA) at paras 18-23, RBOA Tab 12; *S.L. v Marson,* 2014 ONCA 510, [2014] OJ No 3148 (ONCA) at paras 24-33, RBOA Tab 13.**

38. An apprehension of bias must rest on serious grounds in light of the strong presumption of judicial impartiality. The inquiry is highly fact-specific.

> ***Wewaykum, supra,* at paras 76-77, RBOA Tab 8;**
> ***Bailey, supra,* at para 19, RBOA, Tab 9.**

39. Justice Charbonneau is the fourth judge of the Ontario Superior Court of Justice that the Appellant has claimed to have a reasonable apprehension of bias against him in this libel action. This Honourable Court previously rejected the Appellant's allegations that Ontario Superior Court of Justice Robert Beaudoin held a reasonable apprehension of bias against the Appellant.

The Appellant's request that Justice Beaudoin recuse himself was based on, *inter alia*, the following passages from an *Ottawa Citizen* article entitled "Working to keep a son's memory alive":

> (i) "Beaudoin is still picking his way through the rocky landscape of grief."
>
> (ii) "One impulse you have, when you lose a child, is to make sure their name isn't lost and people remember them."
>
> (iii) "After a few rough months, the first step his family took was to set up a scholarship in Iain's name at the University of Ottawa Law School. Beaudoin was also delighted that the law firm Borden Ladner Gervais, where his son was a second-year patent lawyer, named a meeting room after him."
>
> (iv) "So everyday, someone says, 'You can meet in the Iain Beaudoin room.'"

40. Although Justice Beaudoin rejected the Appellant's allegations that he held a reasonable apprehension of bias against the Appellant, Justice Beaudoin had to recuse himself because the Appellant invoked Justice Beaudoin's memory of his son, making him unable to remain impartial towards the Appellant. Undeterred by the fact that Justice Beaudoin recused himself, the Appellant sought leave to appeal to the Divisional Court to obtain a ruling that there was a reasonable apprehension of bias on the part of Justice Beaudoin.

> ***St. Lewis v Rancourt*, 2012 ONSC 6768, [2012] OJ No 5698 (ONSC) at paras 13-14, 18-19, RBOA Tab 14.**

41. The Appellant's motion for leave to appeal to the Divisional Court was dismissed by Ontario Superior Court of Justice Annis:

> [41] Moreover, the University is a large quasi-governmental institution in our community. Being multifaceted, ubiquitous and amorphous, it is anonymous and thus does not permit a suggestion that a judge by setting up a memorial scholarship in the name of his departed son could give rise to an apprehension that the judge might be favourably disposed to the University in litigation brought before him or her.

> [42] The University was merely the means whereby Beaudoin J. could obtain some solemnity from the untimely death of his son in establishing a scholarship for others who wished to study at the University. Actions of this nature intended to benefit Society, even if taken to memorialize a close relation, are not the type of conduct that consciously or unconsciously could suggest a judge cannot act fairly.
>
> ***St. Lewis v Rancourt*, 2012 ONSC 6768, [2012] OJ No 5698 (ONSC) at paras 41-42, RBOA Tab 14. (emphasis added)**

Justice Annis also held that no reasonable apprehension of bias could possibly arise from the fact that Borden Ladner Gervais LLP, which represented the University of Ottawa in the champerty/abuse of process motion, named a boardroom in memory of Justice Beaudoin's son:

> [43] Similarly, no reasonable apprehension of a favourable consideration by Beaudoin J. towards the University could possibly arise by the University being represented by a law firm that had named one of its meeting rooms in memory of his son where he was working at the time of his premature demise.
>
> [44] It is unreasonable to suggest that the mere act of respect by a law firm towards one of its associates who was the son of a judge and whose untimely death touched the firm could indirectly cause the judge to be biased in favour of the law firm's clients…
>
> ***St. Lewis v Rancourt*, 2012 ONSC 6768, [2012] OJ No 5698 (ONSC) at paras 43-44, RBOA Tab 14. (emphasis added)**

42. Undeterred by Justice Annis' decision, the Appellant maintained his attack on Justice Beaudoin's impartiality before this Honourable Court as a ground of his appeal of Justice Robert Smith's dismissal of the Appellant's champerty/abuse of process motion. In dismissing the Appellant's appeal, this Honourable Court agreed with Justice Annis' decision:

> [2] As to the appellant's bias or appearance of bias submission, it in our view has no merit. It was fully considered by Annis J. and rejected. We agree with that decision and, in any event, that decision is not open to challenge in this court.
>
> ***St. Lewis v Rancourt*, 2013 ONCA 701 at para 2, leave to appeal to the SCC dismissed [2014] SCCA No 6 (SCC), RBOA Tab 15. (emphasis added)**

The Appellant's Leave Application to the Supreme Court of Canada from this Honourable Court's decision was dismissed with solicitor and client costs.

43. In this appeal, the Appellant alleges Justice Charbonneau held a reasonable apprehension of bias against him because Justice Charbonneau attended the University of Ottawa (which was over 38 years ago), made two donations of $500 to the University of Ottawa's law school and was the former partner of Case Management Judge Smith (which was over 17 years ago).

44. The Appellant's alleged apprehension of bias is not a reasonable one, held by a reasonable and right-minded person – the apprehension is absurd.

45. The Appellant has failed to meet the stringent *Committee for Justice and Liberty* test and high threshold required to rebut the presumption of judicial impartiality. Justice Charbonneau had no connection to the parties to this libel action and no prior involvement in the case. An informed person, viewing the matter realistically and having thought the matter through, would not conclude that Justice Charbonneau, a Trial Judge for over 17 years, would not decide fairly. As was the case with the spurious bias allegations the Appellant levied at Justice Beaudoin, the Appellant's recusal motion was yet another delay tactic to prevent Professor St. Lewis from having a trial to vindicate her reputation that was so seriously damaged by his racist and defamatory "House Negro" articles.

C. THE JURY WAS NOT BARRED FROM CONSIDERING ANY DEFENCE (ISSUE # 1)

46. The *Factum Of The Appellant* describes issue #1 as follows: "Was it an error of law for the trial judge to bar the jury from considering any defence?" (paragraph 7(1))

(a) The Appellant Had The Burden To Prove His Defences But Adduced No Evidence At Trial

47. The Trial Judge did not bar the jury from considering any defence – there was no defence. The burden was on the Appellant to prove the defences he pleaded and he failed to do

so because he abandoned the trial and adduced no evidence before the jury (his opening address to the jury was not evidence).

48. The common law has long recognized that defences for which there is no factual basis or evidentiary foundation should not be put to the jury.

***R v Livermore,* [1995] 4 SCR 123, [1995] SCR 123 (SCC)at para 15, RBOA Tab 16.**

49. The Appellant was not present at the trial:

(i) during the second day of Professor St. Lewis' examination-in-chief and the testimony of all of her witnesses (the Appellant conducted no cross-examinations and called no witnesses during the trial);

(ii) during the Closing Address to the jury by counsel for Professor St. Lewis; and

(iii) during the Trial Judge's Charge To The Jury.

50. The Appellant unequivocally told the Trial Judge: "I can no longer participate in this process" and "You will take the decisions in my absence. It's finished for me. I'm leaving." The Trial Judge quite properly stated in his charge to the jury: "The Defendant here has not introduced any evidence establishing a defence. Therefore, there is no defence for you to consider."

51. In addition, although the Trial Judge was not required to do so in his charge to the jury, the Trial Judge charged the jury to not give any consideration to the fact that the Appellant ended his participation at the trial:

> "You must not use the fact that Mr. Rancourt chose to end his participation in the trial for or against him. As far as you are concerned for the purpose of your decision, that fact is a totally irrelevant fact."

Trial Transcript, Volume 12, June 3, 2014, p. 15, COTR Volume 2, Tab 11, p. 621.

52. In *Rando Drugs Ltd v Scott*, the Appellant (plaintiff by counterclaim) asked the trial judge to recuse himself because ten years before the trial, the trial judge was a partner of the law firm that had once represented one of the defendants by counterclaim. The trial judge refused to recuse himself, and the Appellant and her counsel then walked out of the courtroom. The trial judge dismissed the counterclaim. Justice Rosenberg dismissed the appeal finding that "by withdrawing from the courtroom, the Appellant abandoned her case":

> [35] No one disputes that when the trial judge came to deal with the counterclaim, after Mr. Colautti and his client had withdrawn from the courtroom, he was unaware of his connection to Mr. Burk. It follows that this relationship could not have influenced his decision. Further, because of Mr. Colautti's action, the decision to be made about the counterclaim was essentially a formal one. There was no one in the court to present evidence to support the counterclaim. I fail to see how the trial judge could have come to any other decision...
>
> [37] If Mr. Colautti and his client had accepted the trial judge's ruling, remained in the courtroom and presented evidence, it may well be that at some point the trial judge would have realized his connection to Mr. Burk and consequently recused himself, as he indicated in the conference call. But, that is not what occurred; counsel and client withdrew leaving the trial judge to make the only decision that could have been made.
>
> [38] ... The pivotal circumstance here is that by refusing to present her case, the appellant left the trial judge with a simple decision that could not, on any theory, have been influenced or appear to have been influenced by the unknown fact.
>
> [39] I would conclude with this comment. Counsel for Mr. Burk was highly critical of Mr. Colautti for refusing to accept the trial judge's ruling. I agree with counsel that it would have been better for the appellant to have accepted the ruling, presented the case and, if she lost, to have raised the issue on appeal. Whatever may have been the law in the past, I consider David Mullan's statement of law in Administrative Law (Toronto: Irwin Law, 2001) at 348 to be correct: [page653]
>
> > . . . the party [who raised the bias issue] need not abandon the proceeding in the sense of refusing to take part. Indeed, not only does the law not require this but it is also very dangerous. . . .
>
> The peril Mullan cautions against occurred here. By withdrawing from the courtroom, the appellant abandoned her case. She cannot rely on an unknown fact that might have affected the course of the proceedings had she remained.

***Rando Drugs Ltd v Scott*, 2007 ONCA 553, [2007] OJ No 2999 (ONCA) at paras 35-39, RBOA Tab 17. (emphasis added)**

53. Likewise, when the Appellant walked out of Justice Charbonneau's courtroom, the Appellant abandoned his case. The burden was on the Appellant to present evidence for the jury to consider and he chose to adduce no evidence because in his words: "It's finished for me". The jury was not barred from considering any defence as alleged by the Appellant – there was no defence to consider.

54. The Respondent also notes that her case was prejudiced by the Appellant's abandonment of his defence because the Appellant deprived the Respondent of the ability to cross-examine him in front of the jury about his malicious conduct and his false and racist "House Negro" publications. Further, evidence that could only be entered through the Appellant's cross-examination was never seen by the jury (such as his collusion with his partisan supporters who were also defaming Professor St. Lewis).

(b) Paragraph 58 of the *Factum Of The Appellant*

55. Paragraph 58 of the *Factum Of The Appellant* contains the incredulous statement that if the Appellant had the slightest indication that his pleaded defences would not be presented to the jury by the Trial Judge this "would have brought the Defendant back into the courtroom." This statement is an *ex post facto* attempt by the Appellant to try to overcome the perilous consequences of his conduct in walking out of what he considered to be a "Kangaroo court" and abandoning his defence of this libel action.

56. The representation in paragraph 58 ("would have brought the Defendant back into the courtroom") is belied by the Appellant's own unequivocal words to the Trial Judge when he abandoned the trial the morning of day #2:

(i) "I can no longer participate in such a process";

(ii) "I'm leaving this unjust process";

(iii) "You will take the decisions in my absence"; and

(iv) "It's finished for me. I'm leaving".

57. In addition, this representation is belied by the Appellant's contemporaneous statements to an *Ottawa Citizen* reporter shortly after he walked out of the courtroom: "I'm not going to participate in the kind of Kangaroo court… This poor jury is not going to hear the whole story".

58. Nor did the Appellant rush back to the courtroom after the Trial Judge released the Respondent's expert witness (Bill St. Arnaud) from his Summons to Witness. Mr. St. Arnaud was going to testify as to why the Appellant's articles on his website uofowatch.blogspot.com were not "broadcasts from a station in Ontario", a condition precedent for the limitation period in section 5 of the *Libel and Slander Act*.

Trial Transcript, Volume 7, May 20, 2014, p. 176, COTR, Tab 12.
***Libel and Slander Act*, RSO 1990, CHAPTER L12, s. 5.**

59. In short, the Appellant's representation in paragraph 58 of his Factum defies reality and he must now live with the consequences of abandoning his defence.

D. THE ALLEGED LIMITATION PERIOD DEFENCE (ISSUE #2)

60. The *Factum Of The Appellant* describes issue #2 as follows: "Was it an error of law for the trial judge not to consider whether the impugned blog post of February 11, 2011, was limitation barred by virtue of the *Libel and Slander Act*, and not to put the relevant question of fact to the jury?" (paragraph 7(2))

61. Firstly, the burden of proof of a limitation defence was on the Appellant and he adduced no evidence at trial regarding his alleged limitation period defence.

62. Secondly, the limitation period in section 5 of the *Libel and Slander Act* only applies to "newspapers" and "broadcasts from a station in Ontario" and has no application to the Appellant's website uofowatch.blogspot.com. Section 5(1) of the *Libel and Slander Act* states that no action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given the defendant notice in writing...". However, section 7 states that section 5(1) applies only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario.

***Libel and Slander Act*, RSO 1990, CHAPTER L12, ss. 5(1), 7.**

63. Because the Appellant abandoned the trial, there was no need for Professor St. Lewis to call her expert witness Bill St. Arnaud to testify as to why the Appellant's website uofowatch.blogspot.com was not "broadcast from a station in Ontario", a condition precedent for a broadcaster to rely on the limitation period in section 5 of the *Libel and Slander Act*. The Appellant adduced no evidence proving that his website uofowatch.blogspot.com was a "broadcast" nor that his House Negro articles were broadcast from "a station in Ontario".

Trial Transcript, Volume 7, May 20, 2014, p. 176, COTR, Volume 2, Tab 12, pp. 623.
***Libel and Slander Act*, RSO 1990, CHAPTER L12, s. 5.**

64. Further, section 8(3) of the *Libel and Slander Act* sets out a scenario where section 5 does not apply to a broadcast. Section 8(3) makes reference to a "registered letter" addressed to a broadcasting station as well as a "registered letter" received at the broadcasting station. Clearly a "broadcasting station" is a building with a street address where a registered letter can be delivered. A "registered letter" cannot be delivered by Canada Post to a website such as

uofowatch.blogspot.com demonstrating that the limitation provisions of the *Libel and Slander Act* have no application to the Appellant's defamatory House Negro publications.

***Libel and Slander Act*, RSO 1990, CHAPTER L12, s. 8(3).**

65. The Appellant's Factum not only claims that his website is a "broadcast", he also claims it is a "newspaper". It is obvious from the provisions of the *Libel and Slander Act* that the Appellant's website is not a "newspaper". Section 8 states that no defendant in an action for libel in a newspaper is entitled to the benefit of section 5 unless the names of the proprietor and publisher and the address of the publication are stated either at the head of the editorials or on the front page of the newspaper. The Appellant's website does not have "editorials" nor a "front page of a newspaper" as required by section 8 of the *Libel and Slander Act*. Nor does the Appellant's website state the names of the proprietor and publisher and the address of the publication at the "head of the editorials" or "on the front page of the newspaper".

***Libel and Slander Act*, RSO 1990, CHAPTER L12, ss. 5, 8.**

66. Contrary to paragraph 24 of the *Factum Of The Appellant*, the Appellant's website does not satisfy the statutory definition of "newspaper" set out in section 1 of the *Libel and Slander Act*. "Newspaper" means "a paper containing public news... printed for distribution to the public". The Appellant's website uofowatch.blogspot.com is not "a paper" and is not "printed for distribution to the public". In addition, Section 7 of the *Libel and Slander Act* requires that a newspaper be "printed and published in Ontario". The Appellant's website is available only through the Internet (electronically) and is not "printed in Ontario" nor "printed for distribution to the public". The limitation provisions in the *Libel and Slander Act* have no application to this libel action.

***Libel and Slander Act*, RSO 1990, CHAPTER L12, ss. 1, 7.**

E. THE MALCOLM X VIDEO (ISSUE #3)

67. The *Factum Of The Appellant* describes Issue #3 as follows: "was it an error of law for the trial judge to allow the jury not to see the entire blog post of February 11, 2011, including the embedded video of Malcolm X?" (paragraph 7(3)).

68. Firstly, Professor St. Lewis' expert witness Camille Nelson (Dean of the University of Suffolk Law School) attached a transcript of the Malcolm X video that the Appellant hyperlinked in his first House Negro article. The full transcript of the Malcolm X video was before the jury and was also addressed by Dean Nelson during her examination-in-chief.

> **Trial Exhibit P-10 (Tab 6), COTR, Volume 3, Tab 26, pp. 745-747.**
> **Trial Transcript, Volume 7, May 20, 2014, pp. 65-75, COTR, Volume 2, Tab 13, pp. 625-635.**

69. Secondly, the Trial Judge had no obligation to require the jury to watch the Malcolm X video.

70. Thirdly, the legal innuendos that arose out of the term "House Negro" was an issue dealt with by the Respondent's expert witness (Dean Camille Nelson). If the playing of the Malcolm X video was relevant to that testimony (it was not) then the Appellant should not have abandoned the trial and should have exercised his right to cross-examine Dean Nelson about the video. In short, it does not lie in the Appellant's mouth to complain about a video not being played during the trial that he abandoned.

71. Paragraph 29 of the *Factum Of The Appellant* represents:

> "And it was agreed in the in-court discussion that followed that the Malcolm X video would be shown."

This representation is wrong – the Trial Judge never agreed that the Malcolm X video would be played. In the context of the Appellant refusing to accept the accuracy of the transcript of the

Malcolm X video, the Trial Judge simply informed the Appellant "you can even refer to it yourself in cross-examination". The Trial Judge never said the video would be shown to the jury.

Trial Transcript, Volume 4, May 14, 2014, p. 152, COTR, Volume 2, Tab 14, p. 637.
Book of Exhibits (Camille Nelson), Trial Exhibit P-10 (Tab 6), COTR, Volume 3, Tab 26, pp. 745-747.

F. A PERMANENT INJUNCTION WAS NECESSARY (ISSUE #4)

72. The *Factum Of The Appellant* describes Issue #4 as follows: "Is the permanent injunction an unjust suppression of the Appellant's freedom of expression guaranteed by the *Charter*; and did the trial judge otherwise err or exceed his jurisdiction?" (paragraph 7(4)).

73. Decades ago, in *Hill v Church of Scientology*, the Supreme Court of Canada made it clear that there is no freedom of expression to defame somebody in Canada and that a person's reputation is as equally important in Canada. A permanent injunction was ordered in *Hill v Church of Scientology*.

***Hill v Church of Scientology*, [1995] 2 SCR 1130, RBOA, Tab 18.**

74. It is not unusual for a permanent injunction to be issued to prohibit a libel defendant from defaming a plaintiff in the future. In *Barrick Gold Corp v Lopehandia*, this Honourable Court reversed the motions judge's decision and granted a permanent injunction, "... restraining the defendants from disseminating, posting on the Internet or publishing further defamatory statements concerning Barrick or its officers, directors or employees".

***Hill v Church of Scientology*, (1992) 7 OR (3d) 489 (ONSC) at 490, 504-505, RBOA Tab 19.**
***Barrick Gold Corp v Lopehandia*, (2004) 71 OR (3d) 416 (ONCA) at para 78, RBOA Tab 20.**

75. In *Ottawa-Carleton District School Board v Scharf*, this Honourable Court affirmed an order of a permanent injunction preventing the defendants "from republishing defamatory statements about the plaintiffs on any website or in any other medium or otherwise

communicating or publishing false and defamatory statements about the plaintiffs" for the following reasons:

> [28] [...] The plaintiffs are professionals and have exemplary reputations in the profession of teaching. Their professional reputations have been attacked and the attacks have gone to the core of their professional reputations. The defendants used the internet to launch those attacks and it is acknowledged that there is an increased potential for harm when the publication is by way of internet. There has been no retraction or apology on the part of the defendants and the offending materials continue to be posted on a website. Neill was severely hurt by the defamation and his first thoughts were of his family. Wilson required psychological counseling and was forced to work only part-time. She was severely affected by the defamation. [...]
>
> ***Ottawa-Carleton District School Board v Scharf,* [2007] OJ No 3030 (ONSC) at paras 28, 30, aff'd 2008 ONCA 154, [2008] OJ No 775, leave to appeal to SCC denied, [2008] SCCA No 285 (SCC) (emphasis added), RBOA Tab 21.**

76. Permanent injunctions have been ordered after findings of defamation where either:

> (1) there is a likelihood that the defendant will continue to publish defamatory statements despite the finding that he is liable to the plaintiff for defamation; or
>
> (2) there is a real possibility that the plaintiff will not receive any compensation, given that enforcement against the defendant of any damage award may not be possible...
>
> ***Astley v Verdun,* 2011 ONSC 3651, [2011] OJ No 2727 (ONSC) at para 21, RBOA Tab 22; *Hunter Dickinson Inc v Butler,* [2010] BCJ No 1332, 2010 BCSC 939 (BCSC), at paras 75-79, RBOA Tab 23; *Griffin v Sullivan,* [2008] BCJ No 1333, 2008 BCSC 827 (BCSC) at paras 119-127, RBOA Tab 24; *Newman v Halstead,* [2006] BCJ No 59, 2006 BCSC 65 (BCSC) at paras. 297-301, RBOA Tab 25; *Cragg v Stephens,* [2010] BCJ No 1641, 2010 BCSC 1177 (BCSC) at paras 34-35, 40, RBOA Tab 26; *Daboll v DeMarco,* 2011 ONSC 1, [2011] OJ No 4 (ONSC) at para 58, RBOA Tab 27; *Warman v Grosvenor,* [2008] OJ No 4462 (ONSC), at paras 90-92, RBOA Tab 28; *Henderson v Pearlman,* [2009] OJ No 3444 (ONSC) at para 52 (ON SC), RBOA Tab 29; *Buckle v Caswell,* 2009 SKQB 363, [2009] SKQB 363, aff'd 2010 SKCA 116, [2010] SJ No 547 (SKCA) at paras 14-15, RBOA Tab 30; *Mina Mar Group Inc. v Divine*, 2011 ONSC 1172, [2011] OJ No 785 (ONSC) at para 28, RBOA Tab 31.**

77. In *Astley v Verdun*, Justice Chapnick recognized that injunctive relief is an exceptional remedy that will not be imposed by the courts lightly, but ordered a permanent injunction given: (1) the plaintiff's high reputation; (2) the wide circulation of the defamatory statements calculated to destroy that reputation; (3) the strong likelihood that the publishing of defamatory

statements against the plaintiff will continue; and (4) the real possibility that the plaintiff will not actually be compensated by the payment of damages. Justice Chapnick ordered a permanent injunction restraining the defendant from posting on the Internet or publishing "in any manner whatsoever, directly or indirectly, any statements or comments about the plaintiff".

***Astley*, *supra*, at paras 33-35, RBOA Tab 22.**

78. The Trial Judge's reasons for decision in granting a permanent injunction found that the Appellant "has a total disregard for the judicial process". The Trial Judge carefully considered the Appellant's conduct in "determining how one may anticipate he will act in the future" which included:

(i) Professor St. Lewis enjoyed an exemplary personal and professional reputation which was persistently attacked by the Appellant. The Appellant's defamatory attacks went to the heart of Professor St. Lewis' professional reputation and she was severely hurt by the defamation;

(ii) the Appellant never apologized and never published a retraction;

(iii) the Appellant was asked to remove the defamatory articles and refused to do so, and in fact continued posting new articles after receiving the requests to take down his defamatory House Negro articles;

(iv) the jury found the Appellant was actuated by malice;

(v) from the time the Appellant walked out of the courtroom he published all types of articles that could prejudice the jury. One such article hyperlinked to an online petition "Give A Fair Court Hearing To Denis Rancourt"; another article

published by the Appellant during the trial was "Why I walked out of the trial in which I am being sued";

(vi) the Appellant claimed the trial was like a proceeding in the Soviet Union during the Stalinist era;

(vii) the Appellant told the media that Justice Charbonneau's court was a "Kangaroo court";

(viii) the Appellant believed that his statements were not defamatory or even if they were, that he was totally entitled to publish them because defamation law is wrong and should be eradicated.

Reasons for Decision (Injunction Motion) of Justice Charbonneau, Trial Transcript, Volume 15A, June 6, 2014, COTR, Volume 2, Tab 10, pp. 599-619 .
Denis Rancourt's blogpost published on May 23, 2014 on his website Activist Teacher entitled "Is it time for the tort of defamation to be abolished?", Exhibit R-10, COTR, Volume 3, Tab 27, pp. 748-759.
Comments by "Englishworks", Denis Rancourt blogpost published on uofowatch.blogspot.com, "U of O law professor Joanne St. Lewis sues Rancourt for $1 million, will give half to a law student scholarship fund", Trial Exhibit P-2 (Tab 50), COTR, Volume 3, Tab 21, 698-702.
Blogpost by Stephen Lendman, supporter of Denis Rancourt, "Denis Rancourt's Struggle for Justice", Trial Exhibit P-2 (Tab 49), COTR, Volume 3, Tab 28, pp. 763-769.

79. The Trial Judge rejected the Appellant's submission that "he may very well get money to pay if he gets his job back". The Trial Judge noted that the Appellant's suggestion "that the plaintiff could always bring an action that the transfer of his house to his wife [for $1] was a fraudulent conveyance indicates he would be prepared to take all the means possible not to pay if he had eventually the financial means to do so."

Trial Transcript, Volume 15A, June 6, 2014, p. 17, COTR, Tab 10, p. 615.

80. A permanent injunction was warranted. Professor St. Lewis endured an unrelenting 3 year campaign of cyberbullying and harassment at the hands of the malicious Appellant. For instance, the Appellant callously published defamatory "comments" about Professor St. Lewis

from a reader in England (who wrote a vile Baa Baa Black Sheep rant about Professor St. Lewis) and did so after this libel action was commenced – he ignored the Notices of Libel demanding that he immediately take down those defamatory "comments".

81. The Appellant told the media that Justice Charbonneau's courtroom was a "Kangaroo Court" and compared the trial to Stalinist proceedings, a full frontal assault on the Trial Judge and the administration of justice in Ontario. He contemptuously published *voir dire* materials, knowing full well that the jury was still empanelled.

82. And, the Appellant advocates for the abolition of the tort of defamation and believes freedom of expression is an absolute right which it is not. In short, this Appellant smeared Professor St. Lewis' reputation with a racist slur and calls that freedom of expression.

83. The Appellant's disdain for Ontario's Courts and Professor St. Lewis is palpable. Any litigant that conducts himself like this Appellant must be permanently restrained. In the circumstances of this case, the malicious and contemptuous conduct of the Appellant demonstrate that the permanent injunction was necessary. The Trial Judge did not err in ordering a permanent injunction and finding that "the conduct of the defendant through the last three and a half years makes it more than probable that he will continue to publish further defamatory comments about the plaintiff".

PART IV - ADDITIONAL ISSUES

84. The Respondent notes:

(i) the Appellant has improperly added evidence into the Appeal Book that was not entered at trial (e.g. pages from the examination for discovery of Professor St. Lewis that were never read into the record at trial); and

Appeal Book and Compendium of the Appellant, Volume II, Tab G26, pp. 402-406;
Appeal Book and Compendium of the Appellant, Volume III, Tab I5, pp. 612-613;
Appeal Book and Compendium of the Appellant, Volume III, Tab I14, pp. 729-731.

(ii) the Appellant did not include in the Appeal Books and Exhibit Books copies of the entire document that was entered as a trial exhibit, contrary to Rule 61.10.1. For this reason, the Respondent's Compendium includes a copy of the missing pages.

***Rules of Civil Procedure,* RRO 1990, Regulation 194, O Reg 259/14, r 61.10.1;**
For a copy of the missing pages, see COTR, Volume 4, Tabs 29 to 55, pp. 770-1064.

PART V - ORDER SOUGHT

85. The Respondent requests an Order dismissing this appeal with costs.

DATE: April 16, 2015

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Joanne St. Lewis

PART VI - CERTIFICATE OF THE RESPONDENT JOANNE ST. LEWIS

Court File No. C59074

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff
(Respondent in Appeal)

and

DENIS RANCOURT

Defendant
(Appellant in Appeal)

CERTIFICATE OF THE RESPONDENT JOANNE ST. LEWIS

1. An Order under sub-Rule 61.09(2) is not required.

2. Counsel for the Respondent Joanne St. Lewis estimates he will require 45 minutes for oral argument to address the six issues set out in the *Factum Of The Appellant*.

Date: April 16, 2015

Richard G. Dearden

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Counsel for the Respondent, Joanne St. Lewis

SCHEDULE "A" – LIST OF AUTHORITIES

1.	*St. Lewis v Rancourt*, 2013 ONSC 1564, [2013] OJ No 1187 (ONSC), aff'd 2013 ONCA 701, [2013] OJ No 5199 (ONCA), leave to appeal to the SCC dismissed [2014] SCCA No 6 (SCC)
2.	*Boucher v Wal-Mart Canada Corp*, 2014 ONCA 419, [2014] OJ No 2452 (ONCA)
3.	*Kerr v Loblaws Inc.*, 2007 ONCA 371, [2007] OJ No 1921 (ONCA)
4.	*Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 (SCC)
5.	*Foulidis v Baker*, 2014 ONCA 529, [2014] OJ No 3239 (ONCA)
6.	*Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 (SCC)
7.	*R v S (R.D.)*, [1997] 3 SCR 484 (SCC)
8.	*Wewaykum Indian Band v Canada*, 2003 SCC 45, [2003] 2 SCR 59 (SCC)
9.	*Bailey v Barbour*, 2012 ONCA 325, [2012] OJ No 2178 (ONCA)
10.	*Terceira v Labourers International Union of North America*, 2014 ONCA 839, [2014] OJ No 5648
11.	*Hazelton Lanes Inc. v 1707590 Ontario Limited*, 2014 ONCA 793, [2014] OJ No 5365 (ONCA)
12.	*Mennes v Canada (Attorney General)*, 2014 ONCA 690, [2014] OJ No 4789 (ONCA)
13.	*S.L. v Marson*, 2014 ONCA 510, [2014] OJ No 3148 (ONCA)
14.	*St. Lewis v Rancourt*, 2012 ONSC 6768, [2012] OJ No 5698 (ONSC)
15.	*St. Lewis v Rancourt*, 2013 ONCA 701, leave to appeal to the SCC dismissed [2014] SCCA No 6 (SCC)
16.	*R v Livermore*, [1995] 4 SCR 123, [1995] SCR 123 (SCC)
17.	*Rando Drugs Ltd v Scott*, 2007 ONCA 553, [2007] OJ No 2999 (ONCA)
18.	*Hill v Church of Scientology*, [1995] 2 SCR 1130
19.	*Hill v Church of Scientology*, (1992) 7 OR (3d) 489 (ONSC)
20.	*Barrick Gold Corp v Lopehandia*, (2004) 71 OR (3d) 416 (ONCA)

21.	*Ottawa-Carleton District School Board v Scharf*, [2007] OJ No 3030 (ONSC), aff'd 2008 ONCA 154, [2008] OJ No 775, leave to appeal to SCC denied, [2008] SCCA No 285 (SCC).
22.	*Astley v Verdun*, 2011 ONSC 3651, [2011] OJ No 2727 (ONSC)
23.	*Hunter Dickinson Inc v Butler*, [2010] BCJ No 1332, 2010 BCSC 939 (BCSC)
24.	*Griffin v Sullivan*, [2008] BCJ No 1333, 2008 BCSC 827 (BCSC)
25.	*Newman v Halstead*, [2006] BCJ No 59, 2006 BCSC 65 (BCSC)
26.	*Cragg v Stephens*, [2010] BCJ No 1641, 2010 BCSC 1177 (BCSC)
27.	*Daboll v DeMarco*, 2011 ONSC 1, [2011] OJ No 4 (ONSC)
28.	*Warman v Grosvenor,* [2008] OJ No 4462 (ONSC)
29.	*Henderson v Pearlman*, [2009] OJ No 3444 (ONSC)
30.	*Buckle v Caswell*, 2009 SKQB 363, [2009] SKQB 363, aff'd 2010 SKCA 116, [2010] SJ No 547 (SKCA)
31.	*Mina Mar Group Inc. v Divine*, 2011 ONSC 1172, [2011] OJ No 785 (ONSC)

SCHEDULE "B" – LEGISLATIVE PROVISIONS

Libel and Slander Act, RSO 1990, CHAPTER L12

Definitions

1. (1) In this Act,

"broadcasting" means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(a) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(b) cables, wires, fibre-optic linkages or laser beams,

and "broadcast" has a corresponding meaning; ("radiodiffusion ou télédiffusion", "radiodiffuser ou télédiffuser")

"newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year. ("journal")

...

Notice of action

5. (1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

Where plaintiff to recover only actual damages

(2) The plaintiff shall recover only actual damages if it appears on the trial,

(a) that the alleged libel was published in good faith;

(b) that the alleged libel did not involve a criminal charge;

(c) that the publication of the alleged libel took place in mistake or misapprehension of the facts; and

(d) that a full and fair retraction of any matter therein alleged to be erroneous,

(i) was published either in the next regular issue of the newspaper or in any regular issue thereof published within three days after the receipt of the notice mentioned in subsection (1) and was so published in as conspicuous a place and type as was the alleged libel, or

(ii) was broadcast either within a reasonable time or within three days after the receipt of the notice mentioned in subsection (1) and was so broadcast as conspicuously as was the alleged libel.

Case of candidate for public office

(3) This section does not apply to the case of a libel against any candidate for public office unless the retraction of the charge is made in a conspicuous manner at least five days before the election.

Limitation of action

6. An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action.

Application of ss. 5 (1), 6

7. Subsection 5(1) and section 6 apply only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario.

Publication of name of publisher, etc.

8. (1) No defendant in an action for a libel in a newspaper is entitled to the benefit of sections 5 and 6 unless the names of the proprietor and publisher and the address of publication are stated either at the head of the editorials or on the front page of the newspaper.

Copy of newspaper to be admissible evidence

(2) The production of a printed copy of a newspaper is admissible in evidence as proof, in the absence of evidence to the contrary, of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

Where ss. 5, 6 not to apply

(3) Where a person, by registered letter containing the person's address and addressed to a broadcasting station, alleges that a libel against the person has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, sections 5 and 6 do not apply with respect to an action by such person against such owner or operator for the alleged libel unless the person whose name and address are so requested delivers the requested information to the first-mentioned person, or mails it by registered letter addressed to the person, within ten days from the date on which the first-mentioned registered letter is received at the broadcasting station.

***Rules of Civil Procedure*, RRO 1990, Regulation 194**

EXHIBIT BOOK

61.10.1 The exhibit book shall contain, in consecutively numbered pages with numbered tabs arranged in the following order,

(a) a table of contents describing each exhibit by its nature, date and exhibit number or letter;

(b) any affidavit evidence, including exhibits, that the parties have not agreed to omit;

(c) transcripts of evidence used on a motion or application that the parties have not agreed to omit; and

(d) a copy of each exhibit filed at a hearing or marked on an examination that the parties have not agreed to omit, arranged in order by date (or, if there are documents with common characteristics, grouped accordingly in order by date) and not by exhibit number. O. Reg. 19/03, s. 15.

Joanne St. Lewis

Respondent (Plaintiff)

- and -

Denis Rancourt

Appellant (Defendant)

Court File No. C56905

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

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